

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 04 SANTO DOMINGO 005426

SIPDIS

SENSITIVE

DEPT FOR WHA/CAR (MCISAAC), DEPT PASS TO SEC, FEDERAL
RESERVE;
TREASURY FOR LAMONICA;
DOJ FOR OIA (MAZUREK AND ORJALES)

E.O. 12958: DECL: 09/30/2010

TAGS: EFIN PGOV PREL KJUS DR

SUBJECT: DOMINICAN BANKING SERIES # 7 - NEW LEGAL TEAMS AIM
AT ALVAREZ RENTA AND PROMISE VIGOROUS PROSECUTIONS

REF: SANTO DOMINGO 2821

Classified By: DCM Lisa Kubiske, reasons 1.4 (b) & (d).

11. (U) This is cable number 7 in a periodic series on the banking system and bank frauds in the Dominican Republic. SEE ACTION REQUESTS FOR SEC AND DOJ/OIA BELOW.

NEW LEGAL TEAMS AIM AT ALVAREZ RENTA AND PROMISE VIGOROUS PROSECUTIONS

12. (U) Legal actions and investigations continue against executives of Dominican banks Baninter, Bancredito and Banco Mercantil, the 2003 failures and frauds of which resulted in losses of approximately 20 % of Dominican GDP, virtually all of it assumed by the government. Previous reports tell the political and forensic story through the presidential election of May 2004, won by former President Leonel Fernandez against incumbent Hipolito Mejia. The Fernandez administration has now been in office for six weeks, and has begun to deal with the many economic, financial and judicial leftovers of the banking frauds.

13. (SBU) Newly appointed head counsel for the Central Bank Fidel Pichardo has told us that the Fernandez administration plans to continue to pursue legal action against the principals in the major bank fraud cases in the Dominican Republic. He echoed the refrain we have heard many times before from previous administration officials: "We will do the best we can, but the judicial system here (Dominican Republic) is weak. We need the USG to move forward on the cases in the United States."

14. (C) Pichardo met with us on two different occasions in early September to discuss the Baninter and Bancredito cases (Banco Mercantil was raised tangentially, but was not the focus of the discussion). On September 14 he flew to Miami to meet with the Central Bank's U.S. legal counsel, Tew Cardenas, and the U.S. Attorney for the Southern District of Florida. Pichardo wanted to impress upon us that the Fernandez administration will not stand for corruption - they will continue to prosecute the cases and attempt to punish those who are culpable. Nevertheless, he expressed surprise that the United States has not moved forward (his perception) on criminal cases against the principal actors. He commented that the United States, "has many more resources and says it wants to pursue justice." He told us that he wants to see the cases move forward in the United States because, despite a promise of an all out effort in the Dominican courts, he does not expect the Dominican judicial system to be able to handle the cases properly.

15. (C) Pichardo spent quite a bit of time summarizing the Baninter case, perhaps more for his own benefit than anyone else's. He stated that before being named as head legal counsel for the Central Bank he had followed the case in the press and via word of mouth among the members of the local bar. After having the opportunity to review the summary of the case and the evidence against the actors, he said he was amazed at the size and scope of the fraud. He told us that he knows the public perception exists that the Fernandez administration may be "soft" on the Baninter case due to former ties between President Fernandez and "Ramoncito" Baez. He assured us that the public perception is wrong and that the Fernandez administration stands for justice and the fight against corruption.

16. (C) Even so, Pichardo attempted to refocus the spotlight on Luis Alvarez Renta and send Ramoncito Baez to the fringes of the stage. He told us that in his opinion Alvarez Renta was the true mastermind of both the Baninter and Bancredito cases and should be the focal point of the U.S. criminal case. He emphasized, more than once, that Alvarez Renta has assets in the United States that could be seized. He asked why seizure has not yet taken place.

Zero interest loan, no collateral necessary

17. (C) Pichardo outlined Alvarez Renta's involvement in one area of the Bancredito case. He told us that the Central Bank has irrefutable evidence that Bancredito, then controlled by the Pellerano family, made a US \$15 million zero interest loan to Alvarez Renta. The loan was made with the instruction to use the funds to purchase Tricom stock (Tricom's majority shareholder was also the Pellerano family). On the loan documents, the Tricom stock, not yet purchased, was listed as collateral. Pichardo said the move was made to drive up the value of the Tricom stock on the NYSE. Alvarez Renta was paid an unspecified sum by the Pellerano family for his involvement in the scam. Pichardo asked us for assistance in investigating insider trading and violations of SEC regulations and provisions. (See action request below)

18. (C) This is not the first time we have heard allegations of fraud and insider trading in Tricom. The former Superintendent of Banks, Julio Cross, called on us shortly before the inauguration of President Fernandez. He provided us with summaries of the findings in the cases - information that the outgoing government turned over to the incoming administration - and his analysis that Bancredito and Tricom are so closely linked that fraud in one means fraud in the other. He likened Bancredito to Moby Dick and Tricom to Captain Ahab's ship the Pequod, saying that Moby Dick was going under and taking everything attached to it with it.

10. (SBU) Additionally, various embassy sources have reported that Tricom is on the edge of bankruptcy but the Pellerano family is working hard to retain control and keep from filing Chapter 11 proceedings in New York. Most have noted the connection among the Pellerano family, Tricom and Bancredito and asserted that Tricom must have been subject to the same types of fraudulent insider activity as the bank.

11. (C) Pichardo also fingered Alvarez Renta in the as yet unopened Banco Mercantil case. Formal charges have not been made against anybody in the Banco Mercantil fraud; however, Pichardo insisted that in addition to Baninter and Bancredito, Alvarez Renta had a hand in receiving unsecured lines of credit from Banco Mercantil.

Meanwhile, the Listin Diario tells its own story

12. (SBU) As part of the Dominican based case against Ramon Baez, in late 2003 the Dominican government confiscated the assets of the Listin Diario media group; a group comprised of numerous media outlets including the Listin Diario, one of the top three daily newspapers in the Dominican Republic. The Baez defense team challenged the seizure of the assets on constitutional grounds. An appellate level court ordered the immediate return of the Listin to the Baez family in April, 2004. The Central Bank appealed that decision to the Supreme Court which stayed the appellate court order pending review. The Supreme Court ordered the GODR to return the Listin Diario media group to the Baez family in compliance with the appellate court ruling on September 2, 2004. However, it left an opening for further Central Bank legal action. The Supreme Court ordered compliance with the appellate court decision to return the assets immediately, but did not rule on the constitutional merits of the case. Under the Dominican legal system, the Central Bank can challenge the decision on the merits by asking for a separate appeals court panel to hear the case. Pichardo told us that, "we are turning over the Listin (as per the Supreme Court order), but we are not giving up."

13. (SBU) The Listin portion of the Baninter case has gotten considerable media play, not only in the pages of its own paper, but in all Dominican news outlets. When the government seized the media group, it took over publication of the Listin Diario. The content moved from quite respectable to slavishly pro-Mejia, at times failing even to mention the lead stories found in other outlets. Both the change in administration and the return of the Listin to the Baez family have resulted in fewer biased stories and a move towards more neutral reporting. A notably aggressive anti-U.S. tone has appeared at times.

14. (SBU) If the Central Bank does decide to pursue the legal avenues to have the media group re-seized in conjunction with the ongoing larger Baninter case, it may be an uphill battle. Although the Central Bank legal team's premise for initiating the action was that seizure of assets was proper under Dominican law, the Baez family has two strong alternative defenses: 1) the media group's controlling interest was owned by Ramon Baez Romano, father of "Ramoncito", not the subject of a criminal action, therefore seizure should be denied, and 2) the due process rights of "Ramoncito" are violated if the media group is seized prior

to a finding of guilt on the criminal fraud charges.

Where is the Baninter case now?

¶15. (SBU) While the Listin portion of the Baninter case has been in the news, the larger case against the principals has slipped a bit from the public spotlight. The case remains on appeal from the findings of the judge of instruction. A three person appellate panel is charged with determining if the judge of instruction correctly determined who should go to trial and on what charges. Central Bank legal counsel Pichardo says that he believes charges against Alvarez Renta should be reinstated. The decision of the judge of instruction numbered over 400 single spaced pages. The task for the appellate court to evaluate that decision and review the underlying evidence presented to the judge of instruction is a complex undertaking. That said, two different sources in the Attorney General's office have told us that they believe the decision of the appellate panel will be issued in the near future. If so, we can expect the case to be back on the front pages and on the airwaves.

¶16. (SBU) The U.S. based portion of the civil case against Luis Alvarez Renta continues. The Monetary Board voted to continue to retain the services of Tew Cardenas, the Miami based law firm that filed the civil RICO action against Luis Alvarez Renta in the Southern District of Florida. The Central Bank is seeking treble damages plus expenses for violations committed by Alvarez Renta and his companies. Pichardo is aware that a civil case of this nature can take years to make it through the U.S. court system, especially when the defendant has deep pockets and is well represented, as is the case with Alvarez Renta. For this reason, Pichardo has asked that the U.S. based criminal investigation against Alvarez Renta move at a faster pace. His trip to the Miami was, in part, to meet and present the GODR case to the U.S. Attorney for the Southern District of Florida. (See action request below).

Coordination in the new administration

¶17. (SBU) Pichardo also emphasized the administration's goal of coordinating efforts to "get the bad guys." Under Mejia, coordination among the Central Bank legal team, the Santo Domingo District Attorney and the Attorney General was abysmal, as evidenced by the fiasco in filing and then suspending of charges in the Bancredito case. Pichardo tells us that he has been working closely with the prosecutorial arms of the government to improve communication and information sharing. New Attorney General Francisco Dominguez Brito echoed the sentiments of Pichardo by saying that the bank fraud cases were a priority and that his office would be working very closely with the Central Bank attorneys in evaluating potential new cases.

Outlook

¶18. (C) The outlook is mixed. We have heard so often and so frequently that the Dominican judicial system will fail in the bank fraud cases that it is difficult not to expect the worst. On the bright side, the coordination and cooperation among the GODR officials with prosecutorial responsibilities is already better than it was during the last year of President Mejia's term. The Attorney General's office is looking into all areas for methods to improve prosecution of serious crime. The Central Bank is "talking the talk" and continuing with efforts to bring the bank fraud actors to justice.

¶19. (U) ACTION REQUEST Embassy Santo Domingo requests the Securities and Exchange Commission consider allegations above regarding the recently delisted publicly traded company, Tricom, S.A., incorporated in and under the laws of the Dominican Republic. Embassy Santo Domingo requests DOJ/OIA ensure that the criminal investigation targeting Baninter principals in the Southern District of Florida has been fully presented to the U.S. Attorney's Office. Embassy is ready to assist SEC investigators in the Tricom/Bancredito case and to continue providing assistance to DHS agents and the U.S. Attorney for the Southern District of Florida in the Baninter case. Previous cables in the series provide further background on the Tricom/Bancredito connection and on the Baninter case. END ACTION REQUEST.

¶20. (U) Drafted by Angela Kerwin.

¶21. (U) This report and others in the series are available at our SIPNET classified site <http://www.state.sgov/p/wha/santodomingo> along with extensive other material.
HERTELL